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March 30, 1998

**RECEIVED**

**MAR 30 1998**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

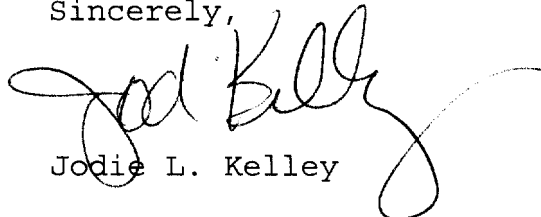
Re: Application of Southern New England  
Telecommunications Corporation and  
SBC Communications Inc. for Authority,  
Pursuant to Part 22 of the Commission's  
Rules, to Transfer Control of Licenses  
Controlled by Southern New England  
Telecommunications Corporation

Dear Ms. Salas:

Enclosed, please find an original and four copies of the  
Comments of MCI in the above captioned proceeding. Also enclosed  
is an extra copy to be file stamped and returned.

Please call if you have any questions.

Sincerely,

  
Jodie L. Kelley

No. of Copies rec'd  
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**MAR 30 1998**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Application of Southern New England  
Telecommunications Corporation and SBC  
Communications Inc. for Authority, Pursuant to  
Part 22 of the Commission's Rules, to Transfer  
Control of Licenses Controlled by Southern  
New England Telecommunications Corporation**

CC Docket No. 98-25

approval of the Bell Atlantic/Nynex merger (the "Bell Atlantic Decision"). There, the Commission noted that under Sections 214(a) and 310(d), it cannot approve the merger unless the applicants demonstrate that the transaction is in the public interest. Moreover, "[i]n order to find that a merger is in the public interest, we must, for example, be convinced that it will enhance competition." Bell Atlantic Decision, ¶ 2. Consequently, if SBC and SNET cannot carry the burden of proving that the merger will enhance competition, "the applications must be denied." *Id.*

The applicants have articulated no plausible reason why the merger will enhance competition. In short, SBC and SNET contend that the merger will give SNET access to greater financial, technical and marketing resources. There simply is no reason to think that SNET will use these additional resources in any manner calculated to open its local telephone markets to competition. SNET has no incentive to do so, because the primary impetus for the RBOCs to permit competition is the opportunity to compete in the interexchange market after the local exchange markets are open to competition; SNET, however, already competes in the interexchange market. Far more likely is the possibility that SNET will use its resources to fend off market-opening initiatives and to squelch attempts by potential competitors to enter the market now dominated by SNET. Indeed, if the past is prologue, the Commission can confidently expect that SNET will use its access to SBC's resources in an anticompetitive fashion.

Certainly, up to now, both SNET and SBC have fought tenaciously to prevent the advent of local competition. For example, SNET has refused to negotiate an interconnection agreement with MCI that comports with Sections 251 and 252 of the Telecommunications Act.

In particular, SNET has encouraged the DPUC to set rates for interconnection and unbundled elements that are not based on its forward-looking costs; is charging rates for most unbundled elements based on state-wide average costs rather than deaveraged costs; refuses to sell certain unbundled elements such as loop distribution and loop concentrator/multiplexer; will not sell telecommunications services to MCI at wholesale rates; and has unlawfully delayed or refused to sell some telecommunications services. SNET's practices with respect to the migration of customer services to MCI have helped to thwart competition, by allowing customer service to be interrupted for a full day during migration and by refusing to notify MCI of migration delays or other problems. SNET has prevented MCI and others from offering vertical services simply by refusing to renew billing and collection agreements. Moreover, SNET has not cooperated with MCI in providing the services which inform callers of a customer's new number with MCI when the callers dial the customer's old number with SNET. SNET also has delayed providing MCI with Customer Service Records and frequently has provided inaccurate records, which then causes SNET to reject MCI's service orders.

SBC's anticompetitive actions in its region have been widespread. SBC has failed to prepare its local network for entry by potential competitors, including by failing to properly activate MCI's NXX codes, failing to provide adequate trunking, insisting on grossly excessive non-recurring charges, unreasonably restricting MCI's ability to physically collocate, imposing excessive costs for collocations, refusing to geographically deaverage prices, and otherwise pricing network elements far in excess of forward-looking economic costs. SBC has also failed to develop adequate OSS to process orders by new entrants, including by relying excessively on manual processing, refusing to adopt an adequate change management process, delaying

activation of MCI's orders, losing MCI's' orders, improperly using confidential ordering information to confuse and intimidate customers MCI is attempting to win, failing to develop adequate operator services capabilities, and dropping customers from directory assistance databases. SBC is also unable to provision loops properly, has repeatedly cut off dial tone for MCI's new customers by botching orders for interim local number portability, and has dropped features for MCI customers. SBC has further refused to provide necessary forecasting information including blockage information, and has refused to agree to adequate performance standards with sufficient remedies to ensure provision of elements in accordance with the Act and interconnection agreements. SBC has also insisted on burdensome "build-out" requirements that make competition impossible, and has imposed egregious requirements that new entrants pay for "right to use" agreements from dozens of third party vendors before SBC will provide elements to CLECs.

In light of this history, there is simply no reason to think that the proposed merger will enhance competition. And while the SBC/SNET merger will produce no real benefits which enhance competition, the merger certainly will reduce the Commission's ability to regulate in a fashion which will promote competition. The SBC/SNET merger represents the third major consolidation of significant local exchange carriers in recent months. This further reduction in the number of LECs adversely affects the Commission's ability "to identify, and therefore contain, market power" by reducing the number of benchmarks available for evaluating the conduct of other carriers. Bell Atlantic Decision, ¶ 147. In addition, eliminating SNET as an independent LEC will diminish experimentation and lessen the diversity of approaches to the task of opening local exchange markets to competition. And one fewer significant LEC means

there is one fewer LEC to “break ranks” if the other LECs begin cooperating to resist regulatory measures to enhance competition. Thus, the Commission noted in the Bell Atlantic Decision that “further reductions in the number of Bell Atlantic Companies or comparable incumbent LECs would present serious public interest concerns.” Bell Atlantic Decision, ¶ 156. These “serious public interest concerns” simply have not been overcome by the purported procompetitive affects of the proposed merger asserted by the applicants.

Apart from the general reduction in the number of significant LECs, there is reason to be concerned that SBC’s acquisition of SNET will eliminate SBC as a potential entrant into the local exchange market now dominated by SNET, and thus will directly diminish competition in that market. SBC’s interest in this market is evidenced by the fact that it agreed to acquire SNET. More importantly, however, SBC’s decision to acquire SNET, following shortly on the heels of its acquisition of PacTel, demonstrates that SBC more than any other RBOC is committed to a strategy of aggressively expanding into local out-of-region markets. Indeed, while SBC has claimed that it only enters a local out-of-region market where it already has facilities, a customer base and brand recognition, these protestations ring hollow where SBC has already entered the California market -- where it had none of these things -- through its acquisition of PacTel, and now proposes to enter SNET’s local out-of-region market despite the absence in that market of SBC facilities or customers. The emerging pattern of SBC’s actions demonstrates that it is focussed on entering new geographic markets rather than “devot[ing] its capital to entering new product markets in its own region”,<sup>1</sup> and that it is not at all loath to enter

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<sup>1</sup>See In re Applications of Pacific Telesis Group, Transferor, and SBC Communications, Inc., Transferee, Memorandum Opinion and Order, 12 F.C.C.R. 2624 (1997), issued in

new markets where it has no existing facilities, customers or name recognition. Accordingly, there is reason for the Commission to believe that SBC may have considered entry into the Connecticut market through means other than its acquisition of SNET.

Moreover, there are few if any other potential entrants in the market equivalent to SBC. Although other RBOCs have capabilities and assets similar to SBC, none has demonstrated the territorial ambitions displayed by SBC. The Commission has found that other potential market entrants, such as CAPs, smaller IXC's, Mobile Telephone Service Providers and Cable MSOs, whatever their competitive chances may be in the long-term, lack the financial resources and other assets necessary to compete effectively in the near term.<sup>2</sup> Bell Atlantic Decision, ¶¶ 83-90. More significant potential competitors, such as MCI, AT&T and Sprint, have experienced a notable lack of success in penetrating the market dominated by SNET. Indeed, the applicants admit that SNET still controls 98 percent of the local exchange market despite the efforts of its putative competitors. In any event, if SBC, AT&T, MCI and Sprint are the only realistic market participants in the near term, the loss of one participant adversely affects competition. Bell Atlantic Decision, ¶ 100. Accordingly, there is reason to believe that SBC's proposed acquisition of SNET will materially reduce actual potential competition in the market.

Finally, the Commission has recognized that BOCs and, after the BOCs have complied with Section 271, their interexchange affiliates, will have the ability to undermine

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connection with the merger of SBC and PacTel, at ¶ 25.

<sup>2</sup>The fact that a significant number of companies may have legally qualified to provide local exchange service in Connecticut says nothing about whether any of these companies has the ability to effect competition in the relevant markets. Bell Atlantic Decision, ¶ 81.

competition by “squeezing” the differential between the price of interstate exchange access services purchased by competitors and the retail price of long distance service offered by the LEC to its customers.<sup>3</sup> In this case, of course, SNET already has an affiliate offering long distance telephone service, and “price squeeze” tactics consequently are a matter of present rather than future concern. The proposed merger will enhance SNET’s and SBC’s ability to engage in this form of anticompetitive pricing for two simple reasons: (1) SBC will be able to engage in price and non-price discrimination on both ends of calls between Connecticut and other states where it is the monopoly provider of local telephone service; and (2) SNET will have access to greater financial resources.

The “price squeeze” is accomplished by setting a “high” price for access services and a “low” price for retail long distance services. To the extent SNET incurs an opportunity cost of lower revenues on some interexchange traffic, that cost will have less impact on SBC than it would on SNET on a stand-alone basis, and access to SBC’s financial resources, therefore, will aid any SNET effort to engage in price squeeze tactics .

Similarly, because it involves the acquisition of an ILEC that monopolizes a substantial area and that currently provides interLATA service to SBC’s territory, the proposed merger would enhance SBC’s ability to harm interexchange competition in Connecticut. Post-merger, SBC could provide through SNET interLATA service originating in Connecticut to SBC’s current territory, including most of California and Texas. For these calls, SBC’s costs of originating and terminating the call will be the economic cost of access. That cost is a small

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<sup>3</sup>See Bell Atlantic Decision, ¶ 115-117.



fraction of the access charges that competing interexchange carriers would pay to SBC at the originating and terminating ends of the call. Moreover, non-price discrimination at the originating end of the call in Connecticut and the terminating end of California, Texas, or other SBC states would exacerbate the competitive impact. SBC would therefore have an enormous advantage over unaffiliated long distance carriers for a significant volume of interexchange traffic in Connecticut, and the merger would increase SBC's ability and incentive to engage in anticompetitive tactics, because both the originating and terminating ends of the call would be in SBC-controlled territory.

This danger did not exist to the same degree in the SBC-PacTel merger (or the Bell Atlantic-NYNEX merger) because the merged BOC could not provide originating interLATA service in any state without first having opened its local exchange markets to competition pursuant to Section 271, and then only through a separate affiliate consistent with Section 272. In this case, however, SBC can provide long distance service -- as soon as the merger is consummated -- through an incumbent monopoly local exchange provider which has not fully implemented the competitive checklist in Section 271, complied with the separation and non-discrimination requirements of Section 272, or otherwise satisfied Section 271.

In light of the adverse impact on competition flowing from the elimination of SNET as an independent LEC, the basis for believing that SBC would have entered the local exchange market in Connecticut but for its proposed acquisition of SNET, and the increased possibility of anticompetitive tactics based on the inflated price of exchange access services and other aspects of SNET's continuing local monopoly power, MCI requests that the Commission approve the merger, if at all, only upon the imposition of conditions which must be satisfied prior

to consumation of the merger and which offset those aspects of the proposed merger deleterious to competition. At a minimum, the Commission should impose conditions that ensure that local competition will be able to develop in Connecticut and in the SBC territories, and that the risks of discrimination and cross-subsidy will be minimized in the meantime. In this instance, MCI submits that the conditions listed below will accomplish these objectives:

**TERMS FOR UNEs and INTERCONNECTION:**

- Require permanent pricing (including NRCs) for *all* network elements, collocation, and interconnection at efficient forward-looking economic cost.
- Require shared transport to be an unbundled network element subject to pricing on a minute per usage basis.
- Resolve all combination of elements issues by requiring SNET to provide elements in their already combined form consistent with the FCC's rule 51.315.
- Require SNET to offer voicemail as a resold service.
- Require SNET to provide an electronic copy (with periodic updates) of SNET's directory assistance database, priced at economic cost.
- Require provision of sub loops and dark fiber as unbundled network elements, priced at economic cost.
- Prohibit SNET from refusing to collocate equipment for economic reasons.
- Prohibit SNET from requiring MCI to engage in a lengthy bona fide request procedures to obtain certain UNEs.

**PERFORMANCE STANDARDS AND OPERATION SUPPORT SYSTEMS**

- Establishment and implementation of performance standards, measurements and self-executing enforcement mechanisms.
- Commercial implementation of operational support systems for pre-ordering, ordering, provisioning, repair and maintenance, and billing of unbundled network elements.

## **SNET AMERICA**

- Elimination of price discrimination potential for SNET America long distance service from Connecticut to SBC territory by:
  - a) Divestiture of SNET America
  - b) Access charges should be reduced to efficient forward-looking economic cost in both Connecticut and SBC region, or
  - c) SNET's filing and satisfaction of a Section 271-equivalent petition at the FCC.
- To the extent SNET America is not divested:
  - a) SNET America should be given the same state regulatory treatment as SNET until the provisions of Connecticut Public Act 94-83 are satisfied for reclassification of SNET America services.
  - b) All SNET America local customers must be subject to the Connecticut local balloting process.

## **ACCESS CHARGES:**

- SNET and SBC must agree to non-discriminatory access charges for long distance calls between the two regions.
- Implementation of the better rates for access charges between SBC and SNET territories.

## **MISCELLANEOUS:**

- Require SNET to execute its interconnection agreement with MCI.
- Any conditions in this merger should apply to all SBC companies, including PacTel and all PacTel agreements and SBC must agree to amend its contracts accordingly.
- SBC must agree to eliminate the requirement that new entrants obtain intellectual property rights from vendor for interconnection services.
- Settle the current PIC-freeze dispute that exists between MCI and SNET, requiring the

following:

- SNET agree to provide and/or make available to MCI with daily updates (6 times weekly), in appropriate customer account record exchange ("CARE") electronic format, a list of all prospects and/or customers that have interLATA and/or intraLATA PIC freezes placed on or removed from their ANIs.
- SNET agrees to reinstate the 10/23/96 Agreement for Post Ballot, Post Allocation Information Services, between SNET and MCI.
- Subject to reasonable conditions, SNET agree to immediately implement all PIC change requests and/or orders submitted by MCI that are subject to TPV or a written LOA in a manner which complies and/or otherwise conforms with the verification procedures and safeguards promulgated by the FCC in 47 CFR secs. 64.1100 and 64.1150.
- SNET agrees to implement all PIC change requests and/or orders, for those telephone numbers with a PIC freeze in place, subject to a 3-way conference call between the MCI telemarketer, the customer and SNET's customer carrier interface group ("CCIG"). In connection therewith, SNET agrees to adequately staff the CCIG such that calls are immediately answered by live operators during business hours. Additionally, SNET agrees to provide and/or make available a voice-mail messaging system for those instances that all CCIG operators are busy and/or when calls to the CCIG are placed after business hours. SNET agrees to immediately implement all PIC change requests and/or orders, for those ANIs with a PIC freeze in place, recorded by the customer on the aforementioned voice-mail messaging system without conducting any follow-up calls or inquiries. Lastly, SNET agrees to immediately initiate or continue a PIC freeze if so requested by a customer either in the 3-way conference call with the CCIG or on the voice-mail messaging system.
- SNET agrees that all interLATA and/or intraLATA PIC change requests and/or orders submitted by its marketers will be subject to and comply with the same practices, procedures and requirements imposed upon MCI.
- SNET agrees to advertise and/or market "Carrier Choice Protection" and/or any other PIC freeze program equally to all customers of its local exchange services, without regard to their interLATA or intraLATA PIC. Additionally, SNET agrees not to advertise and/or market "Carrier Choice Protection" and/or any other PIC freeze program in such a manner as to suggest and/or imply that the same is only available to those customers who have SNET as their interLATA and/or intraLATA PIC.

## **CONCLUSION**

The proposed merger between SBC and SNET continues the recent trend of consolidation among major local exchange carriers. This trend makes regulation by the Commission more difficult and reduces experimentation and diversity with respect to methods of opening local exchange markets to competition. MCI therefore urges the Commission to closely examine whether the applicants have carried their burden of showing that the merger is in the public interest. Should the Commission ultimately approve the pending applications, MCI requests that the Commission impose the conditions listed above in order to mitigate the adverse affects on competition of the proposed merger.

Respectfully submitted,

MCI TELECOMMUNICATIONS  
CORPORATION

By: 

One of its attorneys

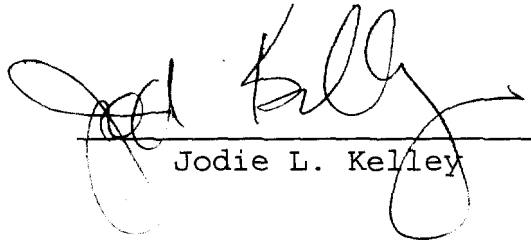
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Filed: March 30, 1998

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of March,  
1998, I caused a true and correct copy of the foregoing  
"Comments" to be served to the parties on the attached list.



A handwritten signature in black ink, appearing to read 'Jodie L. Kelley', is written over a horizontal line. The signature is stylized with large loops and a long horizontal stroke extending to the right.

Jodie L. Kelley

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